

APPEAL NO. 020962
FILED MAY 23, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on April 3, 2002. The hearing officer resolved the disputed issues by deciding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 10th and 11th quarters. The appellant (carrier) appealed and the claimant responded.

DECISION

The hearing officer's decision is affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The SIBs criteria in dispute are whether, during the qualifying periods for the 10th and 11th quarters, the claimant made a good faith effort to obtain employment commensurate with her ability to work and had earned less than 80% of her average weekly wage (AWW) as a direct result of the impairment from the compensable injury. Rule 130.102(d)(1) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has returned to work in a position which is relatively equal to the injured employee's ability to work. Rule 130.102(c) provides that an injured employee has earned less than 80% of the employee's AWW as a direct result of the impairment from the compensable injury if the impairment from the compensable injury is a cause of the reduced earnings.

The claimant testified regarding the work she performed and her earnings during the relevant qualifying periods, and provided documentation in support of her testimony, along with a report from her treating doctor. The hearing officer considered the evidence presented at the CCH and found that during the relevant qualifying periods the claimant was employed commensurate with her abilities resulting from the impairment from the compensable injury and that during the relevant qualifying periods the claimant's underemployment was a direct result of her impairment from the compensable injury. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the trier of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's decision that the claimant is entitled to SIBs for the 10th and 11th quarters is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Robert W. Potts
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge